

REMARKS/ARGUMENTS

I. INTRODUCTION

This Amendment is filed pursuant to 37 C.F.R. § 1.114 to reopen prosecution on the merits following the Board of Appeals and Interferences (“Board”) hearing Applicant’s appeal regarding the rejections advanced by the Examiner against pending claims 14-19 and 27/14 of the present application and the Decision on Appeal issued August 31, 2009. The rejections on appeal were the following:

- A. Claims 14-19, 24/14, and 27/14 under 35 U.S.C. §112, second ¶, for indefiniteness;
- B. Claims 14-17, 19/17, 24/14, and 27/14 under 35 U.S.C. §102(b) for anticipation based on Van Arsdel;
- C. Claims 14-17, 19/17, 24/14, and 27/14 under 35 U.S.C. §102(b) for anticipation based on Anson; and
- D. Claims 14, 18, and 19/18 under 35 U.S.C. §102(b) for anticipation based on Laubach.

In the Decision on Appeal dated August 31, 2009, the Board reversed the indefiniteness rejection, and the anticipation rejections based on Van Arsdale and Laubach. However, the Board affirmed the anticipation rejection based on Anson. The Board also noted in the Decision on Appeal that Applicant did not raise as an issue on appeal the Examiner’s provisional rejection under the judicially created doctrine of obviousness-type double patenting based on claims 20-28 of co-pending Application Ser. No. 10/720,821.¹

During the Applicant’s argument, the Board raised that the “second section” of the Applicant’s invention was a “resting support” and the Anson attachment was not resting support but this had not been raised the prosecution. (See Oral Hearing Transcript at pp. 14-16.) Applicant understood this to be a distinguishing feature between the claims of the present application and Anson.

¹ The Board also heard Applicant’s appeal related to US Patent Application Serial No. 10/720,821 at the August 13, 2009 hearing because of its related issues on appeal.

Applicant will demonstrate herein that the claims, as amended, are patentable over Anson. Further, Applicant files herewith a terminal disclaimer to overcome the obviousness-type double patenting rejection issued by the Examiner.

II. CLAIMS 14-19, 24/14, and 27/14 ARE NOT ANTICIPATED BY ANSON

The Examiner has rejected claims 14-19, 24/14, and 27/14, under 35 U.S.C. §102(b) for allegedly being anticipated by Anson. The description of the Anson attachment on which the Examiner relies in rejecting the pending claims for anticipation is the following:

I [Anson] have found that in the driving of an automobile and particular when driving for extended periods of time over long distances, the normal manner of holding and manipulating the steering wheel, wherein both driver's hands grasp the wheel and positions which require the driver's arms remain in a raised and more or less unnatural and uncomfortable position, considerable strain develops in the driver's hands, arms, shoulders and back particularly, and results in excess of fatigue...

To obviate these disadvantages, I have devised an attachment for steering wheel, which permits a driver to assume a completely comfortable and relaxed driving position, while at the same time, affords a means permitting the driver to at all times retain positive operating control of the steering wheel. [Emphasis added]

Anson, Page 1, Left Column, Lines 6-25.

The steering wheel attachment of Anson is described as follows:

The attachment comprises a hand grip portion 11, which is preferably of bulbular form.... Grip portion 11 normally extends downwardly from the wheel rim and is of suitable length to adapt same to extend to the region of the driver's lap so that it may be grasped by the driver's hand when his hand is resting in a normal comfortable position in his lap. Grip portion 11 is reduced in cross-sectional area at one end to form a neck 12. Neck 12...will have sufficient pliability...to be deflected from its normal pendant position without adversely affecting the measure of control of the steering wheel movements afforded by the positive operating movement of the attachment, while at the same time, neck 12 will retain sufficient rigidity to permit operating movements of hand grip 11 to be positively communicated to the steering wheel rim for effective control of its movements. [Emphasis added]

Anson, Page 1, Right Column, Line 49 – Page 2, Left Column, Line 18.

Of the claims of the present application, claim 14 is an independent claim and claims 15-19, 24/14 and 27/14 depend from claim 14. Claim 14, as amended, recites the following:

14. (Currently Amended) A fatigue relieving/preventing apparatus associated with a steering wheel for controlling a vehicle, comprising:

a first section that connects to a peripheral portion of the steering wheel; and

a rigid, semi-rigid or flexible, or non-deformable second section that connects to, and extends from the first section at the peripheral portion of the steering wheel, the second section extends from the first section outward at an angle to a plane across a front face of the steering wheel, the second section for providing resting support for at least a portion of a vehicular operator's body when pressure from the portion of the vehicular operator's body on the second section is less than the pressure for deforming the second section out of interference with the vehicular operator's ability to operate the steering wheel, and deforming out of interference with the vehicular operator's ability to operate the steering wheel when pressure from the portion of the vehicular operator's body on the second section is equal to or greater than the pressure for deforming the second section out of interference with the vehicular operator's ability to operate the steering wheel. [Emphasis added.]

As shown above with regard to the invention of claim 14, the "second section" provides resting support for the vehicle operator's arm(s), wrist(s), etc. The second section providing "resting support" is supported in the present application and does not add new matter. For example, in Published Application No. US 2004/0255713 "resting support" is supported at least at Figure 3, and paragraphs [0013], [0028], and [0032].

The grip portion 11 of the Anson attachment described in the quotation from Anson is what the Examiner has equated to the "second section" of the claims of the present application. However, as is plainly seen the bulbular-formed grip portion 11 does not provide "resting support" for the driver's body; that is provided by the driver's lap. Noting this, Anson does not support a *prima facie* basis for anticipating claim 14; and Applicant has, therefore, traversed the anticipated rejection based on Anson.

Claims 15-19, 24/14, and 27/14 depend from claim 14. As such, each of these claims adds features to claim 14. Therefore, if claim 14 is not anticipated by Anson, claims 15-19, 24 and 27 that depend from claim 14 also are not anticipated by Anson for at least the same reasons as claim 14.

Applicant has traversed the anticipation rejection raised against claims 14-19, 24/14, and 27/14 based on Anson and request that it be withdrawn.

III. CONCLUSION

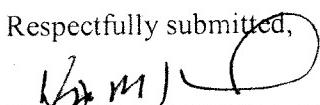
Claims 14-19, 24/14, and 27/14 are pending in the present application. The Examiner's bases for rejecting these claims are under 35 U.S.C. §102 for anticipation based on Anson and the judicially created doctrine of obviousness-type double patenting. In the foregoing, Applicant has clearly traversed the Examiner's basis for rejecting amended claims 14-19, 24/14, and 27/14 for

anticipation by Anson. Further, Applicant files herewith a terminal disclaimer to overcome the obviousness-type double patent rejection. Accordingly Applicant requests that the Examiner withdraw the anticipation rejection based on Anson and obviousness-type double patenting rejection. Noting this, the patent application is in condition for allowance.

The present invention is new, nonobvious, and useful. Reconsideration and allowance of the claims are respectfully requested and the application be passed to issue in due course.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 08-0219, under Order No.: 0114089.121US1 from which the undersigned is authorized to draw.

Respectfully submitted,



Wayne M. Kennard
Registration No. 30,271
Attorney for Appellant

Dated: September 24, 2009

Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, MA 02109
Tel: 617-526-6183
Fax: 617-526-5000